

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

**JOWELL C. BULLARD,
NORRIS RAY TOLLERSON, JR.,
RANDY STOKES, JR., DONNA DAVIS,
ROBERT F. DEXTER, JR.,
JOSHUA R. LUSTER,
SCOTT RUSK, JEFFORY E. POOL,
TYE A. WARD, JAMES DAVID SMITH,
MICHAEL A. KING, DOMINGO MARQUEZ,
STEPHEN A. WILSON, H. WAYNE BLACK,
CHARLES DOUGLAS WALKER,
GARY D. PHENIX,
SCOTT BEECHER HERRING, PAM J. HITT,
SAMUEL RAY GIBSON,
JOHNNIE R. WHITAKER,
EUFEMIO JOE RUBALCABA,
CHRISTOPHER L. SCHWARZ,
STACY L. GRANT,
HERBERT CHARLES CARR,
CHRIS JENKINS, TODD FINLEY,
KEVIN WAYNE OSBORNE,
M. L. WITHERSPOON,
ALVIN VIRGIL NEWTON,
RODERICK J. UPTON, KEVIN LANKFORD,
on their own behalf and for all others similarly
situated,**

CASE NO. 2-07-CV-049-J

Plaintiffs,

V.

**BABCOCK & WILCOX TECHNICAL
SERVICES PANTEX, L.L.C.,**

Defendants.

**PLAINTIFFS' RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON
SALARY AMOUNT AND THE SALARY BASIS TEST**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to the Federal Rules of Civil Procedure, Plaintiffs file this Response to Babcock & Wilcox Technical Services Pantex, L.L.C.'s Motion for Partial Summary Judgment and would show the Court the following:

SUMMARY

1. Plaintiffs are or were hourly non-exempt employees of Defendant Babcock & Wilcox Technical Services Pantex, L.L.C. employed as 1st or 2nd Lieutenants or Captains in the Protective Force or Fire Department dating back to March 19, 2004. Plaintiffs are suing Defendant Babcock & Wilcox Technical Services Pantex, L.L.C. for earned, but unpaid compensation for time and one-half pay for time spent over 40 hours per week for Defendant Babcock & Wilcox Technical Services Pantex, L.L.C. during the period of March 19, 2004 until March 19, 2007.
2. Defendant Babcock & Wilcox Technical Services Pantex, L.L.C. has for more than three years, willingly, deliberately, and intentionally refused to pay Plaintiffs for time and one-half pay for overtime worked and is therefore in violation of the Fair Labor Standards Act (FLSA).
3. Defendant's attempt to focus the trial on the Plaintiffs' duties is unfounded. All three elements set forth in the Department of Labor regulations must be met in order for an employee to be exempt. It's an "all or nothing" test.
4. Plaintiff has filed a Brief in Response to Defendant's Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test which includes arguments and authorities in support of this response pursuant to the Local Rule of the Northern

District of Texas 56.5. Each of the matters required by Local Rule of the Northern District of Texas 56.4 will be set forth in Plaintiffs' Brief. Plaintiff has also filed an Appendix of Exhibits for the Brief in Response to Defendant's Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test pursuant to the Local Rule of the Northern District of Texas 56.6.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that this Response to Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test be granted against Defendants, and that Plaintiffs have such other and further relief as the Court deems just.

DATE: January 7, 2008.

s/ Jason C. Webster
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Jason C. Webster, one of the attorneys for Plaintiffs, do hereby certify that I caused the foregoing document to be electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to the following counsel:

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Counsel for Defendant BWXT Pantex, L.L.C.

I further certify that I have caused a true and correct copy of the foregoing to be forwarded via United States mail, postage prepaid, to any of the above who were not served via ECF notification.

DATED: January 7, 2008

s/ Jason C. Webster
JASON C. WEBSTER